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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

EUGENE LAMAR HAMILTON,  
Plaintiff, No. C 13-3410 PJH (PR)  
vs. ORDER OF DISMISSAL WITH  
L. SANCHEZ, LEAVE TO AMEND  
Defendant. /

Plaintiff, a former state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. His original complaint was dismissed with leave to amend and he has filed an amended complaint.

**DISCUSSION**

**A. Standard of Review**

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only ""give the defendant fair notice of what the . . . claim is and the grounds upon which it rests."'" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed factual

1 allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'  
2 requires more than labels and conclusions, and a formulaic recitation of the elements of a  
3 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief  
4 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)  
5 (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is  
6 plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained  
7 the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the  
8 framework of a complaint, they must be supported by factual allegations. When there are  
9 well-pleaded factual allegations, a court should assume their veracity and then determine  
10 whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662,  
11 679 (2009).

12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential  
13 elements: (1) that a right secured by the Constitution or laws of the United States was  
14 violated, and (2) that the alleged deprivation was committed by a person acting under the  
15 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

16 **B. Legal Claims**

17 Plaintiff alleges that the sole defendant in this case retaliated against him for his  
18 filing of a legal action.

19 "Within the prison context, a viable claim of First Amendment retaliation entails five  
20 basic elements: (1) An assertion that a state actor took some adverse action against an  
21 inmate (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled  
22 the inmate's exercise of his First Amendment rights, and (5) the action did not reasonably  
23 advance a legitimate correctional goal." *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th  
24 Cir. 2005) (footnote omitted). *Accord Pratt v. Rowland*, 65 F.3d 802, 806 (9th Cir. 1995)  
25 (prisoner suing prison officials under § 1983 for retaliation must allege that he was  
26 retaliated against for exercising his constitutional rights and that the retaliatory action did  
27 not advance legitimate penological goals, such as preserving institutional order and  
28 discipline) .

1       A prisoner must at least allege that he suffered harm, since harm that is more than  
2 minimal will almost always have a chilling effect. *Rhodes*, 408 F.3d at 567-68 n.11; see  
3 *Gomez v. Vernon*, 255 F.3d 1118, 1127-28 (9th Cir. 2001) (prisoner alleged injury by  
4 claiming he had to quit his law library job in the face of repeated threats by defendants to  
5 transfer him because of his complaints about the administration of the library).

6       It is difficult to understand the exact allegations of plaintiff's action regarding events  
7 that occurred at Salinas Valley State Prison. In October 2011, plaintiff was issued a Rules  
8 Violation Report (RVR) for possession of a weapon by two correctional officers and he lost  
9 custody credits as a result. That RVR was later dismissed by prison officials and plaintiff is  
10 proceeding with a legal action against the two correctional officers in another case in this  
11 court. See *Hamilton v. Rodriguez*, No. C 12-4697 PJH (PR).

12       In this case, plaintiff states that defendant Sanchez denied plaintiff his custody  
13 credits that should have been returned and then told other prisoners that plaintiff was a  
14 child molester in retaliation for filing the other action in this court. Other than a conclusory  
15 statement, plaintiff provides no allegations to support his claim of retaliation nor does there  
16 appear to be any harm. Plaintiff appealed after he was not returned his custody credits and  
17 he states that a non-defendant Captain Walker ordered all of his credits to be restored.  
18 Am. Compl. at 5. Nor is there is any indication that plaintiff was ever harmed from the  
19 allegation that defendant told other prisoners that plaintiff was a child molester. Plaintiff  
20 also discusses a RVR he received at another prison in Los Angeles in 2007 that resulted in  
21 the loss of custody credits, but it is not clear how that involves the allegations against the  
22 defendant at Salinas Valley State Prison. Plaintiff also appealed that incident and was  
23 provided additional custody credits to expedite his release. Am. Compl. at 5. Plaintiff was  
24 paroled in September 2013.

25       Despite being informed in the court's initial review that he must provide more support  
26 for his allegations, plaintiff's bare allegations are still insufficient to state a retaliation claim  
27 under *Iqbal*. "A claim has facial plausibility when the plaintiff pleads factual content that  
28 allows the court to draw the reasonable inference that the defendant is liable for the

1 misconduct alleged." *Iqbal*, 556 U.S., at 678. To the extent there could be a due process  
2 violation regarding plaintiff not being provided his custody credits it seems they were  
3 returned and he provides no connection to this defendant regarding lost custody credits  
4 from a prison in Los Angeles that were also later returned.<sup>1</sup> Plaintiff will be provided one  
5 final opportunity to amend to better present his claims. No further amendments will be  
6 allowed.

7 **CONCLUSION**

8 1. The complaint is **DISMISSED** with leave to amend in accordance with the  
9 standards set forth above. The amended complaint must be filed no later than **December**  
10 **16, 2013**, and must include the caption and civil case number used in this order and the  
11 words **SECOND AMENDED COMPLAINT** on the first page. Because an amended  
12 complaint completely replaces the original complaint, plaintiff must include in it all the  
13 claims he wishes to present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992).  
14 He may not incorporate material from the original complaint by reference. Failure to amend  
15 within the designated time will result in the dismissal of these claims.

16 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the  
17 court informed of any change of address by filing a separate paper with the clerk headed  
18 "Notice of Change of Address," and must comply with the court's orders in a timely fashion.  
19 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to  
20 Federal Rule of Civil Procedure 41(b).

21 Dated: November 15, 2013.

  
22 **PHYLLIS J. HAMILTON**  
23 United States District Judge

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26 <sup>1</sup> Nor has plaintiff sufficiently demonstrated in this complaint that defendant or other  
27 prison officials incorrectly determined his release date in violation of the Eighth Amendment  
28 or due process. Nor does plaintiff state that he requested a hearing pursuant to *Haygood v.*  
*Younger*, 769 F.2d 1350 (9th Cir. 1985), regarding his release date. To the extent he did  
request relief regarding his custody credits, it seems prison officials complied in a timely  
manner.